

BOARD OF PESTICIDES CONTROL

December 19, 2003

Board Rooms, Senator Inn & Spa
284 Western Avenue, Augusta

AGENDA/MINUTES

9:30 A.M.

The regular monthly meeting was called to order at 9:32 A.M. by Chair Carol Eckert. Other members in attendance included Berry, Bradstreet, Dann and Humphreys. Jemison arrived at 9:39 A.M. Walton was unable to attend.

1. Introductions of Board and Staff

- ☒ The members and staff introduced themselves.

2. Minutes of the November 21, 2003 Board Meeting

Action Needed: Amend and/or Approve.

- ☒ Berry/Dann: Motion made and seconded to approve the minutes as distributed.

In Favor: Unanimous

Absent: Jemison

3. Section 18 Emergency Registration Request for Propiconazole to Control Mummy Berry Disease in Blueberries

For the past six years, the Board has petitioned EPA for a FIFRA Section 18 specific exemption for use of propiconazole (Orbit 3.6E) to control Mummy Berry disease in wild blueberries. A tolerance petition for blueberries was submitted to EPA in August of 1995 but there is still no assurance the federal agency will approve a full Section 3 registration before the 2004 growing season. The Cooperative Extension Blueberry Specialist has therefore requested that the Board again petition EPA for the Section 18 specific exemption. The University of Maine Scientist also points out that there are no effective alternatives to control Mummy Berry and a heavy infestation could cause significant economic losses to Maine growers.

Presentation By: Wesley C. Smith
Pesticides Registrar

Action Needed: Approve/Deny request to petition EPA for a Section 18 Specific Exemption registration for propiconazole for blueberries.

- ☒ Smith explained that the registrant had submitted all the data for a tolerance but they were still waiting in line for the review required by the Food Quality and Protection Act.

He also called the member's attention to an E-mail message in their folders from EPA indicating the agency might not be able to renew the time-limited tolerance that expires on December 31st. He asked if the Board wished to authorize him to submit a separate Section 18 for febuconazole, a Dow AgroSciences product with the trade name Indar. He noted EPA had already approved Section 18 requests for febuconazole on blueberries in several other states, and also pointed out this product was already registered for use on several other crops in Maine.

Berry/Bradstreet: Motion made and seconded to petition EPA for a Section 18 Specific Exemption registration for both propiconazole and febuconazole for blueberries.

In Favor: Unanimous
Absent: Jemison

4. Review of Cooperative Extension's Latest Water Quality Monitoring Results

Since 1989, the Cooperative Extension Blueberry Specialist has been conducting annual sampling of several wells in and around blueberry fields to monitor for the presence of the highly soluble herbicide hexazinone. In recent years, he has also looked for three additional blueberry pesticides in both ground and surface water. At this meeting, he will share the results of his 2003 sampling program.

Presentation By: David Yarborough
Extension Blueberry Specialist

Action Needed: Discussion and determination if any action is appropriate at this time.

- ☒ Yarborough made a power point presentation of his data and noted that the graphs distributed in the packets contained some minor errors that had been corrected in the copies included in their folders. He noted the hexazinone levels in water varied over the season and were similar to those found the previous year. He also focused on Well # 42 that is approximately 42 feet deep and serves as the municipal water supply for Machias. He reported that the two growers who abut the well are following the Hexazinone BMPs and only using the granular form at just over one pound per acre.

Humphreys asked about tables showing data over several years and Yarborough responded that Hicks had produced them in prior years. He agreed he would be sure to include them next year. Jennings asked if the two growers abutting the Machias well would be utilizing alternate herbicides since this was a subject of local concern. Yarborough indicated that he would be contacting Craig Leonard in the Department of Agriculture about this matter. Berry observed that the Water District picked a poor spot for its well and should consider purchasing more of the surrounding land.

5. Request to Repeal Deblois Critical Pesticide Control Area

The Board has received a request from Jasper Wyman & Son to repeal the Deblois Critical Pesticide Control Area. This section of Chapter 60 was adopted in 1979 to protect the water supply for a state owned fish hatchery from aerial pesticide applications

to adjacent blueberry fields. The rule was amended in 1998 to allow applications to be performed according to a pesticide management plan approved by the Board on an annual basis. The fish hatchery is not currently in operation but the Maine Department of Inland Fisheries and Wildlife opposes any reduction in the size of the critical area while it attempts to sell the property as a viable hatchery site. The Board will also consider an alternate option of amending the rule to suspend the special restrictions on pesticide use in years when the hatchery is closed.

Presentation By: Robert I. Batteese, Jr.
Director

Action Needed: Discussion and decision whether the Board wishes to initiate rule-making at this time.

- ☒ Batteese informed the members Steve Wilson, IF&W Fish Culture Superintendent, was present to answer questions but suggested the Board first hear from the delegation that visited the area. Dann made a powerpoint presentation and noted that the very large spring was a great natural resource. He further explained that the wooded buffers Wyman's had planted consisted of three rows of evergreen trees that were now about 40 feet deep. Berry agreed it was very significant area but expressed his belief the 1,000 foot restrictions were overkill. He recommended that the distances could be reduced to 500 feet around the radius of the spring and to 250 feet from each side of the stream down to the tree line.

Wilson explained that his Department did not have long-term plans for the site although they might use it as a back up facility while they are renovating one of their other hatcheries. He stated they hoped to sell the property as an operating hatchery but also noted that it is a valuable water resource that includes a couple of high output wells in addition to the natural spring. Upon questioning, Wilson indicated that if the hatchery were to be used, eggs would be brought in during the fall so there would be ample notice of when the hatchery would be in operation. He also noted the fry should be out of the hatch house by July.

Jennings observed that there was nothing to prevent the members from approving a less restrictive pest management plan in years that the hatchery was not in operation. Yarborough indicated he could help Wyman's prepare an appropriate pest management plan utilizing the distances recommended by Berry.

Humphreys/Jemison: Motion made and seconded to reject the request for repeal of the critical pesticide control area because it was premature and to notify Wyman's that the Board views it in everybody's interest to keep the property viable for a fish hatchery.

In Favor: Unanimous

6. Adoption of an Enforcement Policy for School Systems Not in Full Compliance with the New Chapter 27 Regulation

The Board's new Chapter 27 Regulation setting standards for pesticide applications and public notification in schools became effective August 30, 2003. The staff has

recognized that some of the requirements will take time for schools to fully implement. Historically, the Board has allowed for a grace period when new rules become effective. The staff is asking the Board if it wishes to adopt a policy urging the staff not to seek monetary penalties during the first year of implementation of Chapter 27, except where the staff determines, in its discretion, that monetary penalties are warranted based on the seriousness of the violation.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Discussion and determination if the Board wishes to adopt a policy that urges staff not to seek monetary penalties during the first year of implementation of Chapter 27, except where the staff determines, in its discretion, that monetary penalties are warranted based on the seriousness of the violation.

- ☒ Jennings reminded the members the Board has had a history of phasing in new rules and recommended that they adopt the policy drafted by the staff. Eckert agreed noting that her school board was working to implement an IPM policy but had been hampered by many other pressing needs.

Bradstreet/Berry: Motion made and seconded to adopt the policy for a period of up to 18 months.

In Favor: Unanimous

7. Consideration of Staff Negotiated Consent Agreement with Hemphill's, Inc. of Vassalboro

On June 3, 1998, The Board amended its Enforcement Protocol to authorize staff to work with the Attorney General and negotiate consent agreements in advance in matters not involving substantial threats to the environment or public health. This procedure was designed for cases where there is no dispute of material facts of law, and the violator admits to the violation and acknowledges a willingness to pay a fine and resolve the matter. This case involves the distribution of general use pesticides at a retail store over a ten-year period when they failed to renew or obtain licenses seven out of the ten years. These actions constitute a violation of the Board's statute requiring any person distributing general use pesticides to be licensed as a general use pesticide dealer.

Presentation By: Henry S. Jennings
Chief of Compliance

Action Needed: Approve/Disapprove the consent agreement negotiated by staff.

- ☒ Jennings explained that this company is a small retailer focused on equestrian accessories and supplies so pesticides are a very small part of the business. He also noted that if GUPDs fail to license one year they do not receive a notice to renew. He stated he took these facts into consideration in lowering the monetary fine to \$200.00. There was

sentiment among the members that the staff should keep a close watch on this retailer's licensing status in the coming year.

Humphreys/Jemison: Motion made and seconded to approve the consent agreement negotiated by staff.

In Favor: Unanimous

8. Review of Public Hearing Record on Requested Repeal or Proposed Amendment to Section 4 of Chapter 41 Dealing with Aquatic Herbicides

A public hearing was held in Augusta on November 21st on both a requested repeal of Section 4 of Chapter 41 that became effective May 12, 2003 and an alternate amendment to only list herbicide products that are registered in Maine and have aquatic uses on the container's label. Only one person spoke in support of repeal while ten people opposed repeal and most indicated they supported the alternate amendment. The comment period closed on December 5th with two additional people supporting repeal and five more opposed. The staff has prepared a summary and an analysis of the comments for review at this meeting. The staff did not find any merit to the request to repeal the rule and recommends that the Board move toward adoption of the alternate amendment.

Presentation By: Robert I. Batteese, Jr.
Director

Action Needed: Discussion and determination if the members want staff to prepare the alternate amendment and a supporting basis statement for review at the next meeting.

- ☒ Batteese called the member's attention to the transcript and updated summary that was in their folders. He noted the three people supporting repeal were involved with sales and that the majority of commenters were opposed to repeal with several supporting the staff amendment. He noted that unless the members indicated otherwise, the staff analysis would become the Board Response at the next meeting. Eckert asked if the members were ready to provide guidance to the staff and there was consensus that the staff should prepare their amendment for adoption as well as develop a supporting basis statement.

9. Other Old or New Business

a. Pesticide Container Recycling Update - R. Batteese

- ☒ Batteese reported the bulk of the plastic containers and shredded plastic had finally been transported out of state but that he was still waiting to hear from Rob Denny of ACRC on how the program would be improved for next year. Bradstreet indicated the Maine Potato Board was willing to assist and that the Central Aroostook Soil & Water Conservation District was going to take a second look at again becoming involved.

b. Update on Consensus-Based Rule Development Process - G. Fish

- ☒ Fish announced the group would be meeting on January 7th and that an agenda and some informational materials had been mailed the previous day.

c. Other ???

- ☒ Randlett called the member's attention to the draft guidelines in their folders and noted state agencies needed to adopt procedures to protect Fourth Amendment Rights to Privacy. He explained this action was necessary in order to head off legislation that would severely limit a natural resource agency's ability to conduct inspections. He further reported that training had been conducted for most agency personnel and that he would be training the Board's inspectors on January 7th. Jennings pointed out that this policy simply described the procedures that have been employed since the enforcement program was created in 1980. In response to a question from Jackson, Randlett indicated that the policy would also cover entering private property to collect water samples but that oral consent would be fine.

Dann/Humphreys: Motion made and seconded to adopt the Maine Board of Pesticide Control Guidelines for Conducting Inspections.

In Favor: Unanimous

10. Schedule and Location of Future Meetings

- a. The Board has tentatively scheduled the next meeting for Friday, January 23, 2004 with a snow date of January 30th.
- ☒ The Board scheduled the next meeting for Friday, January 23rd in the Bangor area with a snow date of January 30th.
- b. Location and Dates for Future Meetings?
- ☒ The Board tentatively scheduled the next meeting for Friday, March 19th.

11. Adjourn

- ☒ A motion to adjourn was accepted at 11:31 A.M.

Robert I. Batteese, Jr.
Director